

SERVED MAR 21 2005



US DEPARTMENT OF TRANSPORTATION
OFFICE OF HEARINGS
WASHINGTON, DC

IN THE MATTER OF

PETER L. BRADLEY

FAA DOCKET NO. CP04WP0030
(Civil Penalty Case)
DMS FAA-2005-20532 -4

PROCEDURAL ORDER

In order to expedite the hearing in this matter,¹ the parties shall comply with the Procedural Schedule set forth hereinbelow.²

The Rules of Practice for this proceeding are set forth in 14 C.F.R. Part 13, Subpart G, of the Federal Aviation Regulations. Those rules provide, *inter alia*, that the Respondent must file a written Answer or motion within thirty (30) days after service of the Complaint (14 C.F.R. § 13.209(a)); that a general denial is deemed a failure to file an Answer (§ 13.209(e)); that failure

¹ 14 C.F.R. § 13.221 states: "The administrative law judge shall give each party at least 60 days notice of the date, time and location of the hearing."

² Further amendments of the pleadings will not be anticipated absent good cause shown. While 14 C.F.R. § 13.214(b)(1) permits amendments at any time more than 15 days before a hearing, utilization of that provision would prevent orderly preparation for a hearing and could prevent any hearing at all, since notice of a hearing must be given 60 days in advance. 14 C.F.R. § 13.221(a). An amendment which might be filed 15 days prior to the hearing would entitle the other party up to 20 days in which to reply (14 C.F.R. § 13.214(c)), and could generate a new round of schedules (14 C.F.R. § 13.217), motions (14 C.F.R. § 13.218), and discovery (14 C.F.R. § 13.220), necessitating a postponement of the hearing, a new 60-day notice, *et cetera ad infinitum*.

to file an Answer without good cause is deemed an admission of each allegation in the Complaint (§13.209(f)); and that, absent agreement of the parties, a party seeking an extension of time must file a written motion not less than seven (7) days before the document is due, absent good cause shown (§ 13.213(a) and (b)).

More specifically, 14 CFR § 13.209 (e) states:

A person filing an answer shall admit, deny, or state that the person is without sufficient knowledge or information to admit or deny, each numbered paragraph of the complaint. Any statement or allegation contained in the complaint that is not specifically denied in the answer may be deemed an admission of the truth of that allegation. A general denial of the complaint is deemed a failure to file an answer.

Under FAA Order 2150.3A and the Rules governing these proceedings, the Agency attorney and the Respondent should continue to consider the possibility of settlement and compromise of this matter³. Compromise may be effected with or without a finding of violation (14 C.F.R. §13.16 (k) (1)).

The parties are advised that submissions sent to the street address of the U.S. Department of Transportation, Office of Hearings may be delayed in delivery due to screening conducted at the local U.S.P.S. bulk mail facility and may take up to four weeks to arrive by regular mail. In addition, submissions may be “irradiated” at the facility, which affects the quality of the submission. The parties are encouraged, but not required, to fax or express carrier pleadings and/or other submissions. The certificate of service shall reflect the manner of service. All pleadings shall include telephone numbers where the parties can be reached.

NOTE: This presiding Judge does not require “Discovery” to be served on the Judge. Other Judges have different policies, but as long as this case is assigned to the

³ See Linda Joyce Goodman, FAA Docket No. CP89WP0061, Order dated May 30, 1989.

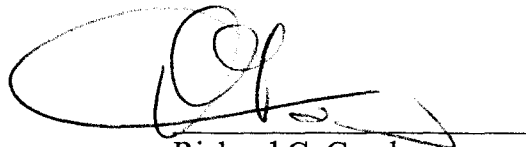
undersigned presiding Judge the parties may, but are not required, to serve discovery on the undersigned.

WHEREFORE, the parties be and are hereby ORDERED to adhere to the following procedural schedule:

1. Venue shall be San Francisco, CA;
2. On or before twenty (20) days after the date of service of this Order the parties shall submit statement(s) of the status of settlement efforts and exchange preliminary lists of witnesses and exhibits;
3. On or before forty-five (45) days after the date of the service of this Order the parties shall conclude all discovery including, but not limited to, depositions, document production, responses to production requests and/or answers to interrogatories;
4. On or before fifty (50) days after the date of the service of this Order the parties shall:
 - a. file any amended witness and exhibit lists;
 - b. file any briefs for consideration by the undersigned prior to or during the hearing;
5. On or before ten (10) days prior to the hearing the parties shall file any stipulations;
6. **Settled cases will not be removed from the docket until the Judge receives the proper pleading(s);⁴**

⁴ 14 C.F.R. § 13.215 states: "Withdrawal of complaint or request for hearing. At any time before or during a hearing, an agency attorney may withdraw a complaint or a party may withdraw a request for a hearing without the consent

7. **NOTICE IS HEREBY GIVEN** the parties shall be prepared to present evidence and testimony at a hearing on the merits sixty (60) days from the date of this Order, subject to the availability of courtroom facilities;⁵ and
8. The parties will have the opportunity to file Post-Hearing briefs and arguments pursuant to a schedule to be determined at the hearing. For guidance, the following schedule is typically used: Complainant shall file its brief fifteen (15) days after receipt of the transcript; Respondent shall its brief fifteen (15) days thereafter; and any rebuttal brief by the Complainant shall be filed seven (7) days thereafter.



Richard C. Goodwin
U.S. Administrative Law Judge

Attachments – Service List

of the administrative law judge. If an agency attorney withdraws the complaint or a party withdraws the request for a hearing and the answer, the administrative law judge shall dismiss the proceedings under this subpart with prejudice.

⁵ 14 C.F.R. § 13.221 states: “The administrative law judge shall give each party at least 60 days notice of the date, time and location of the hearing.”

NOTICE TO THE PARTIES

There have been several recent instances where the Judge and court reporter have been the only persons to travel to and appear at previously scheduled hearings only to learn the case had settled and a Complainant had failed to timely notify the Judge. At a minimum, this conduct is discourteous and unprofessional; it is extremely inconsiderate of the hospitality of the host jurisdiction; it precludes rescheduling facilities and personnel; and more importantly, it is unacceptable and may result in referral to appropriate bar disciplinary committees if continued. Accordingly, counsel should adhere to the guidance provided by Judge Kolko's in his 1991 decision:⁶

A greater professional mien is expected of all counsel than has been heretofore demonstrated; The Rules of Practice apply to all parties to these proceedings; Counsel are expected to practice their calling at the highest level of professional conduct; Attention to details of litigation practice is included in that responsibility; Any time there happens in a case an event that involves that case, a filing must be made; Any time a filing of any kind is made that filing must be timely served upon the presiding Judge.

Counsel are further advised settled cases will not be removed from the hearing docket until the proper written pleading(s), consistent with the applicable rules, is received by the Judge.⁷

The burden of proof is on the agency.⁸ In the case of withdrawal of a complaint or request for hearing based on settlement, Complainant shall file with the docket section and serve on the Judge and the parties the proper pleadings to effectuate dismissal in a manner calculated to preclude inconvenience to the court. The parties are advised that hearings cancelled less than two (2) weeks prior to the hearing may result in payment of a court reporter and travel expenses (airfare, rental car, hotel, etc.) for the Judge, which are ultimately billed to the FAA. For guidance, the Judge generally makes transportation arrangements two (2) weeks *after* the date of service of the Procedural Order or Notice of Tentative Hearing Date.

The Judge travels extensively. Consequently, telephone messages left on the Judge's voicemail may not be retrieved for extended periods of time. The parties are advised to call the Judge's Legal Assistant [202-366-5121] or Attorney-Advisor [202-366-6941].

⁶ Kerry James Eldridge, FAA Docket CP89GL0458, Order Canceling Hearing and Terminating Proceeding, served January 16, 1991.

⁷ See 14 C.F.R. § 13.215 ("At any time before or during a hearing, an agency attorney may withdraw a complaint or a party may withdraw a request for a hearing without the consent of the administrative law judge. If an agency attorney withdraws the complaint or a party withdraws the request for a hearing and the answer, the administrative law judge shall dismiss the proceedings under this subpart with prejudice.")

⁸ See 14 C.F.R. § 13.224(a) ("Except in the case of an affirmative defense, the burden of proof is on the agency.")

SERVICE LIST

ORIGINAL & ONE COPY

Hearing Docket
Federal Aviation Administration
800 Independence Avenue, S.W.
Washington, DC 20591
Att: Hearing Docket Clerk, AGC-430
Wilbur Wright Building – Room 2014¹

ONE COPY

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¹ Service was by U.S. Mail. For service in person or by expedited courier, use the following address:
Hearing Docket, Federal Aviation Administration, 600 Independence Avenue, S.W., Wilbur Wright Building – Room
2014, Washington, DC 20591. Att: Hearing Docket Clerk, AGC-430.